IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18/02/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Civil Revision Petition No. 3388 of 2001
and CRP NOs., 3389, 3390 and 3410 Of 2001

I. Jairaj .. Petitioner in all the C.R.Ps.

-Vs-

1.B. Champalal Jain .. 1st Respondent in C.R.P.3388/2001.

1.Mrs. Avantika N. Jain..1st Respondent in C.R.P.3389/2001

1.Mrs. Chetna R. Jain ..1st Respondent in C.R.P.3390/2001

1.M. Parasmal ..1st Respondent in C.R.P.3410/2001.

2. M/s. Firenze Shoes P. Ltd.,
Chennai-117.

3. M/s. Lords Shoe Makers P.Ltd.,
Chennai-17

4. SBP Madan Mohan, Chennai-41.

5. Radhika Mohan, Chennai41.
..Respondents 2 to 5 in CRP Nos.3388
to 3390 and 3410/2001.

Civil Revision Petitions against the order and decretal order dated 24-9-2001 passed by the II Assistant Judge, City Civil Court, Madras in I.A.No. 17651/2000 in O.S.No.2267/99; I.A.No.17652/2000 in O.S.No. 2262/1999; 17653/2000 in O.S.No. 2261/1999; and I.A.No. 1 7650/2000 in O.S.No.2265 of 1999 respectively.

!Ms. Chitra Narayanan:- For petitioner.

^Mr. A. Venkatesan:- For 1st Respondent in
All the C.R.Ps.

:COMMON ORDER

Since the petitioner is one and the same and issue raised is also similar, they are being disposed of by the following common Order. C.R.P.No. 3388 of 2001 is directed against the order dated 24-9-2001 passed by the II Assistant Judge, City Civil Court, Madras in I.A.No.17651 of 2000 in O.S.No. 2267 of 99 in and by which, the learned judge dismissed the said petition filed to stay the proceedings of the suit. Against the similar orders, the very same petitioner has filed the other three Revisions.

2. The first respondent herein B. Champalal Jain filed O.S.Nos.2267/99, 2262/99, 2261/99, and 2265/99 on the file of the II Assistant Judge, City Civil Court, Madras for recovery of money based on promissory notes. In all the suits, the first defendant is M/s. Firenze Shoes P.Ltd., Chennai-117, second defendant is M/s. Lords Shoe Makers P. Ltd., Chennai-117, third defendant is SBP Madan Mohan, Chennai-41 and fourth defendant is Radhika Mohan and fifth defendant is I. Jairaj. Defendants 1 and 2 are companies and defendants 3 to 5 are Directors. Except 5th defendant, the petitioner in all the above revisions, others were set ex parte. Pending the suit, 5th defendant/petitioner herein filed Interlocutory Applications in all the suits under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, seeking to stay trial of the suit. In the affidavit filed in support of the above applications, it is stated that the first defendant company is a sick company and has been registered with the Board for Industrial Development and Financial Reconstruction (BIFR in short) as a sick industrial company. In view of the registration in terms of Section 22 of the Act, no suit or other proceedings can be initiated or continued against the company and the present proceeding is liable to be stayed. In other words, the petitioner has prayed for an order staying the suits till the completion of the proceedings before B.I.F.R. The said applications were resisted by the plaintiff by filing counter affidavit. Before the II Assistant Judge, three documents were marked as Exs. P-1 to P-3 on the side of the petitioners. No oral evidence was let in by both sides. The learned II Additional Judge on appreciation of rival contentions, after holding that the petitioner neither the company nor the guarantor filed suit promissory note and he is only an individual, refused to grant stay of the suit and ultimately dismissed all the four applications; hence the present Revisions.

3. Heard Ms. Chitra Narayanan, learned counsel for the petitioner, and Mr. A. Venkatesan for first respondent.

4. Ms. Chitra Narayanan, learned counsel for the petitioner, after taking me through Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, would contend that in view of the pendency of proceedings before the BIFR, all the four suits cannot be proceeded with till the disposal of the proceedings before the BIFR. On the other hand, Mr. A. Venkatesan, learned counsel appearing for the contesting first respondent/plaintiff, contended that the petitioner neither a company nor a guarantor, the Court below is perfectly right in dismissing his petition.

5. The only point for consideration in these Revisions is, whether the suits are to be stayed till the completion of the proceedings before the BIFR?

6. As said earlier, the first respondent herein/ plaintiff filed four suits against the company and it its Directors claiming money based on promotes. In the suit promissory notes the petitioner herein namely I. Jairaj has put his signature in 4 places, two as Managing Director and in two places without mentioning anything. The name of the two companies, namely, defendants 1 and 2 are also mentioned in the promissory notes. No doubt, except 5th defendant, petitioner in these revisions all others are not contesting the suit. It is the claim of the petitioner that the company has filed an appropriate petition before the BIFR and the Board has accepted the claim of the company and proceedings are pending as on date. This is evident from ex.P-3, an order of BIFR dated 12-9-2001. It is relevant to refer Section 22 of the Act:-

"Section 22. Suspension of legal proceedings, contracts, etc.- (1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

The above provision makes it clear that Section 22 (1) attracts even a suit filed for recovery of money pending before any civil Court. Learned II Assistant Judge though accepted the fact that the company has approached the BIFR and proceedings are pending after finding that the petitioner is neither a company nor a guarantor, dismissed the petition filed for staying the suits. I have already referred to the contents of promissory note. Though the petitioner has promised to pay the amount mentioned therein, he borrowed the amount not for himself, but for the company which is clear that he borrowed the amount in the capacity of the Managing Director of the company. In such a circumstance, I am satisfied that the learned trial Judge has committed an error in dismissing the petition filed by the petitioner. In Patheja Bros. Forging and Stamping v. ICICI (SC) [Volume 102] 2000 Company Cases page 21, the Supreme Court of India has held that the suit for the enforcement of the guarantor in respect of the loan granted could not be proceeded with unless consent as required by Section 22 is obtained. In Ravi Srinivasan, V. v. Manipal Finance Corporaiton Ltd., reported in 2002 (4) CTC 219, while considering the provisions of the Presidency Towns Insolvency Act and Sick Industrial companies (Special Provisions) Act, 1985, I have held that the benefit conferred on the principal debtor is applicable to the guarantor.

7. The perusal of suit promissory note as discussed above, Ex.P-3, order of BIFR dated 12-9-2001, I am satisfied that the learned trial Judge disregarded the peremptory provision of Section 22 of the Act. It is settled law that once a company is registered with the BIFR., all proceedings filed against a company and its guarantors must be stayed forth-with and shall not be proceeded with without the consent of BIFR. Section 22 imposes a prohibition on recovery from guarantors of the sick industrial company. The purpose behind such a provision is to prevent the isolated burdening of the guarantor or co-obligant with the debt of the sick industrial company, until recovery can be commenced against the sick industrial company itself, which fact has been disregarded by the learned trial Judge. Further, the materials placed clearly show that the loan was granted to the sick industrial company and that the petitioner was only the Director of the company. It is also clear that the petitioner has signed the debt instrument only as a Director on behalf of the sick industrial company and I hold that the benefit of Section 22 of the Act will accrue to him. By virtue of the provisions of Section 22 of the Act, all co-obligants are also entitled to the benefit of stay in terms thereof, until permission is obtained from the BIFR.

8. In the light of what is stated above, the impugned order of the learned II Assistant Judge, City Civil Court dated 24-9 -2001 made in I.A.Nos.17651/2000, 17652/2000, 17653/2000 and 17650/20 00 are set aside and there shall be an order of stay of proceedings in O.S.Nos. 2267, 2262, 2261 and 2265 of 1999. Depending on the orders of the BIFR, the parties are at liberty to move the Court below for further orders. Civil Revision Petitions are allowed. No costs.

R.B.

Index:- Yes
Internet: yes

To:-

The II Assistant Judge, City Civil Court, Madras.